

Impact Fund
BRAD SELIGMAN (SBN 083838)
bseligman@impactfund.org
JOCELYN D. LARKIN (SBN 110817)
125 University Avenue, Suite 102
Berkeley, CA 94710
Telephone: 510.845.3473
Facsimile: 510.845.3654

Bingham McCutchen LLP
FRANK B. KENNAMER (SBN 157844)
ABIGAIL C. SLONECKER (SBN 252452)
abigail.slonecker@bingham.com
Three Embarcadero Center
San Francisco, CA 94111
Telephone: 415.393.2000
Facsimile: 415.393.2286

Attorneys for Plaintiffs SANTEYA DANYELL
WILLIAMS, MARY RUTH SCOTT, KAREN
LATREECE COLEMAN, PRISCILLA BUNTON, and
ALYCE DENISE PAYNE

[Additional Counsel Listed After Signature Page]

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

SANTEYA DANYELL WILLIAMS, MARY
RUTH SCOTT, KAREN LATREECE
COLEMAN, PRISCILLA BUNTON, and
ALYCE DENISE PAYNE, on behalf of
themselves and all others similarly situated,

Plaintiffs,

v.

CITY OF ANTIOCH,

Defendant.

No. C-08-2301 SBA

**PLAINTIFFS' MOTION FOR
BIFURCATION AND SUPPORTING
MEMORANDUM OF POINTS AND
AUTHORITIES**

Date: January 12, 2010

Time: 1:00 p.m.

TABLE OF CONTENTS

| | <u>Page</u> |
|---|-------------|
| NOTICE OF MOTION | 1 |
| I. INTRODUCTION | 1 |
| II. ARGUMENT | 1 |
| A. CIVIL RIGHTS CLASS ACTIONS ARE PARTICULARLY APPROPRIATE FOR BIFURCATION | 1 |
| B. BIFURCATION IS APPROPRIATE IN THIS CASE | 3 |
| III. CONCLUSION | 5 |

TABLE OF AUTHORITIES

Page(s)

FEDERAL CASES

Arnold v. United Artists Theater Circuit

158 F.R.D. 439 (N.D. Cal. 1994)..... 2, 3, 4, 5

Botosan v. Paul McNally Realty

216 F.3d 827,835 (9th Cir. 2000)..... 4

Butler v. Home Depot, Inc.

1996 WL 421436 (N.D. Cal. Jan. 25, 1996) 2

Cooper v. Fed. Reserve Bank

467 U.S. 867 (1984)..... 2, 3

EEOC v. Nebco Evans Distribution, Inc.

1997 WL 416423 (D. Neb. June 9, 1997) 5

National Federation of the Blind v. Target Corp.

582 F.Supp.2d 1185 (N.D. Cal. 2007) 2, 3

Hickey v. City of Seattle

236 F.R.D. 659 (W.D. Wash. 2006) 2

International Brotherhood of Teamsters v. United States

431 U.S. 324 (1977)..... 2, 3, 5

Robinson v. Metro North Commuter R.R. Co.

267 F.3d 147 (2d Cir. 2001)..... 2

Ryan v. Carl Corp.

1999 WL 16320 (N.D. Cal. Jan. 13, 1999) 2

CALIFORNIA STATUTES

Cal. Civil Code § 52.1 4

Cal. Civil Code 52..... 4

Cal. Civil Code 52.1(b) 4

Cal. Civil Code 52(a) 4

OTHER AUTHORITIES

Fed R. Civ. P. 42(b) 1

NOTICE OF MOTION

On January 12, 2010 at 1:00 p.m., in Courtroom 1, before the Honorable Sandra Brown Armstrong, United States District Court, 1301 Clay Street, Suite 400, Oakland, CA. 94612, Plaintiffs will move for an order bifurcating this action for liability and damage phases pursuant to Federal Rule of Civil Procedure 42(b).

I. INTRODUCTION

Pursuant to Fed R. Civ. P. 42(b), plaintiff move to bifurcate pre-trial and trial of this action into liability and damages phases. Such bifurcation is standard in civil rights class action litigation, and is justified by convenience, judicial economy, and simplification of issues. The issues of liability and entitlement to damages are clearly separable and defendant will suffer no prejudice from bifurcation. Instead of lengthy discovery and trial focused on all issues, bifurcation focuses the action and serves judicial economy. If plaintiffs do not prevail in the first, liability stage, then the court and parties avoid unnecessary proceedings and expense. On the other hand, if plaintiffs prevail in the first stage, the court may order injunctive relief, and the damages phase will be streamlined by presumptions arising from the liability judgment.

Plaintiffs propose bifurcation of pre-trial and trial as follows:

1. The first stage of the action will be limited to defendant's liability to plaintiffs and the class. If class liability is found, the court would order appropriate injunctive and declaratory relief.

2. If liability is found at stage one, the next stage of the action would focus on monetary relief. The subsequent trial would determine damages for plaintiffs and individual class members.

II. ARGUMENT

A. CIVIL RIGHTS CLASS ACTIONS ARE PARTICULARLY APPROPRIATE FOR BIFURCATION

Bifurcation of trial into liability and damages phases is commonly ordered in class cases, particularly cases relying on a pattern or practice discrimination theory. *See e.g. Robinson v. Metro North Commuter R.R. Co.*, 267 F.3d 147, 158 (2d Cir. 2001) (Title VII); *Hickey v. City of*

1 *Seattle*, 236 F.R.D. 659, 666-67 (W.D. Wash. 2006) (unlawful arrests); *National Federation of*
 2 *the Blind v. Target Corp.*, 582 F.Supp.2d 1185, 1209 (N.D. Cal. 2007) (disability access); *Arnold*
 3 *v. UA Theater Circuit*, 158 F.R.D. 439, 458-60 (N.D. Cal. 1994) (disability access); *Ryan v. Carl*
 4 *Corp.*, 1999 WL 16320, at *4-5, 11 (N.D. Cal. Jan. 13, 1999) (copyright); *Butler v. Home Depot,*
 5 *Inc.*, 1996 WL 421436 (N.D. Cal. Jan. 25, 1996) (Title VII).

6 The rationale for bifurcation into liability and damage phases in civil rights cases was
 7 explained by the United States Supreme Court in the employment discrimination pattern or
 8 practice case of *International Brotherhood of Teamsters v. United States*, 431 U.S. 324 (1977).¹
 9 In that nationwide employment discrimination case, the United States alleged that the defendant
 10 engaged in a pattern and practice of intentional discrimination against minority job applicants
 11 and would-be applicants for truck driver positions. The Court explained that at the liability stage
 12 of the case, the government had to prove “more than the mere occurrence of isolated or
 13 ‘accidental’ or sporadic discriminatory acts. It had to establish by a preponderance of the
 14 evidence that racial discrimination was the company’s standard operating procedure — the
 15 regular rather than the unusual practice.” *Id.* at 336. The government made this showing
 16 through a combination of statistical and anecdotal evidence. *Id.* at 337-38. The Court explained:

17 At the initial, ‘liability’ stage of a pattern-or-practice case, the
 18 Government is not required to offer evidence that each person for whom it
 19 will ultimately seek relief was a victim of the employer’s discriminatory
 20 policy. Its burden is to establish a prima facie case that such a policy
 21 existed. The burden then shifts to the employer to defeat the prima facie
 22 showing of a pattern or practice by demonstrating that the Government’s
 23 proof is either inaccurate or insignificant The point is that at the
 24 liability stage of a pattern-or-practice trial the focus often will not be on
 25 individual hiring decisions While a pattern might be demonstrated by
 26 examining the discrete decisions of which it is composed, the
 Government’s suits have more commonly involved proof of the expected
 result of a regularly followed discriminatory policy.

Id. at 360, n.46. In essence, the liability stage focuses on the defendant’s policy as it applies to
 the entire class, not on proof of individual instances of discrimination.

¹ Although *Teamsters* was not a class action, the Supreme Court has confirmed that “the
 elements of a prima facie pattern-or-practice case are the same in a private class action.” *Cooper*
v. Fed. Reserve Bank, 467 U.S. 867, 876 n.9 (1984).

1 If the defendant fails to rebut the prima facie case, liability is established and the trial
 2 court determines the appropriate remedy. “*Without any further evidence* from the Government, a
 3 court’s finding of a pattern or practice justifies an award of prospective relief. Such relief might
 4 take the form of an injunctive order against continuation of the discriminatory practice” *Id.*
 5 at 361 (emphasis added); *see also Cooper v. Fed. Reserve Bank*, 467 U.S. 867, 876 (1984) (“[A]
 6 finding of a pattern or practice of discrimination itself justifies an award of prospective relief to
 7 the class”). Importantly, such relief is issued without any requirement of assessing the
 8 claims of individual class members.

9 If individual relief is sought, “a district court must usually conduct additional proceedings
 10 after the liability phase of the trial to determine the scope of individual relief.” *Teamsters*, 431
 11 U.S. at 361. In such subsequent proceedings, class members are presumed entitled to relief -- a
 12 presumption that a defendant may rebut with a showing that, notwithstanding the finding of a
 13 pattern or practice of discrimination, it acted lawfully in with regard to an individual class
 14 member. *Id.* at 362.

15 **B. BIFURCATION IS APPROPRIATE IN THIS CASE**

16 Courts considering bifurcation evaluate the complexity of the legal and factual issues,
 17 judicial economy and potential prejudice to the parties. *See e.g. National Federation of the Blind*,
 18 582 F.Supp.2d at 1209; *Arnold*, 158 F.R.D. at 459-460. Consideration of these factors in the
 19 present case confirm that bifurcation is the appropriate procedure.

20 The constitutional and statutory claims in this action are complex, with plaintiffs relying
 21 on three overlapping theories of liability (adverse impact, intentional discrimination and “source
 22 of income” discrimination). If a class is certified, potentially hundreds of class members may
 23 have claims that would need to be resolved. Combining liability, individual entitlement and
 24 damages issues into one trial would be complex and potentially confusing to a jury. Bifurcation,
 25 on the other hand, simplifies the issues and saves the resources of the court and parties.

26 Judge Henderson addressed a similar bifurcation motion in *Arnold, supra*, a disability
 27 access class action. There, as here, plaintiffs sought to bifurcate the action into a class liability
 28 phase, and then, if they prevailed, a second damages phase. There, as here, plaintiffs sought only

1 statutory minimum damages for the class, in that case under the same statutory minimum
 2 damage provision as alleged in the present case, Cal. Civil Code § 52(a). Judge Henderson
 3 granted the request. His reasoning is fully applicable to this case:

4 This suit plainly involves highly complex issues of both California and
 5 federal law. A jury trial is likely, as the California law claims carry with
 6 them that right. The Court concludes that a unitary trial in which fact
 7 issues pertaining to both liability and class damages were combined would
 be substantially more complicated than a bifurcated trial, and would
 consequently increase the risk of jury misunderstanding.

8 158 F.R.D. at 459.

9 Bifurcation would simplify the action. As noted above, the *Teamsters* model of
 10 bifurcation has been applied in a wide variety of contexts. In Title VII cases, the damages phase
 11 can involve complex questions of individual entitlement and extent of back pay and other
 12 damages. *Arnold*, supra at 453.² In the present case, however, the second stage would be much
 13 simpler, because plaintiffs seek only statutory minimum damages available for class members
 14 under California's Bane Act, Cal. Civil Code § 52.1.³ If a denial of constitutional or statutory
 15 rights is established, an individual is entitled to damages "but in no case less than four thousand
 16 dollars (\$4,000)." Cal. Civil Code § 52(a). No proof of damages is required for recovery of
 17 minimum damages under Cal. Civil Code § 52. *See Botosan v. Paul McNally Realty*, 216 F.3d
 18 827, 835 (9th Cir. 2000). Thus, the second stage will address only whether class members are
 19 entitled to relief. If the finder of fact finds they are, they are entitled to the statutory minimum

20 ² Judge Henderson contrasted the statutory minimum damages claims sought in *Arnold* with Title
 21 VII damages:

22 It is clear that plaintiffs' damage claims based on actual visits to UA theaters are far less
 23 complicated than the average Title VII suit where back pay relief is sought. In such Title
 24 VII cases, in addition to proving illegal discrimination, claimants must both establish that
 25 they individually suffered damages and prove the extent of those damages. Moreover,
 defenses reducing the damage award by the amount of any interim earnings, or for failure
 to mitigate the injury, are available to defendants, as well as the defense that there was no
 but-for causation because, even absent discrimination, the same employment action
 would have been taken for different, legitimate reasons.

26 *Arnold*, 158 F.R.D. at 453.

27 ³ Under the Bane Act, a person whose rights have been violated is entitled to seek damages and
 28 injunctive relief under Cal. Civil Code § 52. *See* Cal. Civil Code § 52.1(b). Cal. Civil Code
 § 52(a) provides for statutory damages of "in no case less than four thousand dollars"

1 for “each and every offense” without proof of damages. Cal. Civil Code § 52(a).⁴

2 In the present case, bifurcation offers many advantages to the court and parties. Instead
3 of a lengthy trial, preceded by extensive discovery on all claims, the initial trial would be focused
4 on liability. If plaintiffs do not prevail, then discovery and other pretrial proceedings and trial on
5 class member entitlement to damages is avoided, saving both the court and parties from
6 unnecessary expense. On the other hand, if plaintiffs prevail at stage one, then the damages
7 phase will be streamlined by the *Teamsters* presumption flowing from the liability judgment,
8 thus easing the burden of proof for individual class members. Cases frequently settle after a
9 liability judgment as well. *Arnold*, 158 F.R.D. at 459-460.

10 Bifurcating the action will also lessen the risk of jury confusion, since each stage of the
11 trial will be focused on limited factual and legal issues. Moreover, as *Teamsters* explained, the
12 liability and individual relief portions of the trial *are* easily severable. 431 U.S. at 361-63.⁵
13 There is no conceivable prejudice to defendant from bifurcation. Indeed, defendant stands to
14 benefit from bifurcation should it prevail in the first stage.

15 III. CONCLUSION

16 Accordingly, plaintiffs request bifurcation of this action.

17
18
19 DATED: October 26, 2009

IMPACT FUND

21 By: /s/ Brad Seligman
22 Brad Seligman

23 Attorneys for Plaintiffs and the Proposed Class
24

25
26 ⁴ Named plaintiffs also assert individual claims for relief in addition to Bane Act claims. The extent of their damages would be determined in the second stage of the trial as well.

27 ⁵ Because the issues are distinct, a different jury may preside over stage two. *Arnold*, 158
28 F.R.D. at 460; *EEOC v. Nebco Evans Distribution, Inc.*, 1997 WL 416423, at *2 (D. Neb. June 9, 1997).

Additional Counsel:

Lawyers' Committee For Civil Rights
of the San Francisco Bay Area
OREN M. SELLSTROM (SBN 161074)
osellstrom@lccr.com
KENDRA FOX-DAVIS (SBN 248757)
131 Steuart Street, Suite 400
San Francisco, CA 94105
Telephone: 415.543.9444
Facsimile: 415.543.0296

Covington & Burling LLP
HAYWOOD S. GILLIAM, JR. (SBN 172732)
hgilliam@cov.com
One Front Street
San Francisco, CA 94111
Telephone: 415.591.6000
Facsimile: 415.591.6091

American Civil Liberties Union
Foundation of Northern California
ALAN L. SCHLOSSER (SBN 49957)
aschlosser@aclunc.org
ANDRE I. SEGURA (SBN 247681)
39 Drumm Street
San Francisco, CA 94111
Telephone: 415.621.2493
Facsimile: 415.255.8437

Public Advocates, Inc.
RICHARD A. MARCANTONIO (SBN 39619)
Rmarcantonio@publicadvocates.org
SAMUEL TEPPERMAN-GELFANT (SBN 240944)
131 Steuart Street, Suite 300
San Francisco, CA 94105
Telephone: 415.431.7430
Facsimile: 415.431.1048

Attorneys for Plaintiffs SANTEYA DANYELL
WILLIAMS, MARY RUTH SCOTT, KAREN
LATREECE COLEMAN, PRISCILLA BUNTON,
and ALYCE DENISE PAYNE